

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR
PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA
Title III

Case No. 17-03283 (LTS)

(Jointly Administered)

**STATEMENT OF U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE,
WITH RESPECT TO AMBAC ASSURANCE CORPORATION'S MOTION AND
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION CONCERNING
APPLICATION OF THE AUTOMATIC STAY TO THE REVENUES SECURING
PRIFA RUM TAX BONDS**

U.S. Bank Trust National Association, as Trustee (“U.S. Bank” or the “Trustee”) for the PRIFA Special Tax Revenue Bonds Series 2005A, 2005B, Refunding Series 2005C and Series 2006 (collectively, the PRIFA Bonds”, also referred to as the “Rum Tax Revenue Bonds”) hereby submits this statement with respect to *Ambac Assurance Corporation’s Motion and Memorandum of Law in Support of its Motion Concerning*

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Application of the Automatic Stay to the Revenues Securing PRIFA Rum Tax Bonds (Dkt. No. 7176) (the “Motion”)² and respectfully states as follows:

STATEMENT

1. Through the Motion, Ambac Assurance Corporation (“Ambac”) seeks an order establishing that the automatic stay is not applicable to two lawsuits relating to the Rum Tax Revenue Bonds: first, an already-filed action against the U.S. Department of Treasury and Treasury Secretary Steven Mnuchin for an equitable lien on and escrowing of the Pledged Rum Taxes before they are transferred to the Commonwealth (the “U.S. Treasury Action”); and second, a contemplated action against the Commonwealth to enforce liens against and halt the ongoing appropriation of the Pledged Rum Taxes (the “PRIFA Clawback Action”, and together with the U.S. Treasury Action, the “Actions”). Alternatively, Ambac seeks relief from the automatic stay to pursue the Actions or an order requiring the Commonwealth to provide adequate protection for the use of collateral under Section 361 of the Bankruptcy Code. On or about June 21, 2019, Financial Guaranty Insurance Company (“FGIC”) joined in the Motion. Parties including the Financial Oversight Management Board, the Commonwealth of Puerto Rico, and the Official Committee of Unsecured Creditors have filed oppositions to the Motion, Assured Guaranty entities have filed a limited joinder to the Motion, and replies and sur-replies have been filed by various parties.

2. On May 18, 2018, in compliance with the Bar Date Orders, the Trustee filed a protective Proof of Claim for the benefit of all Bondholders against the Commonwealth for all rights and entitlement that U.S. Bank as Trustee has or may have of whatever nature or kind against the Commonwealth as set forth in the Trust Agreement and applicable law, including

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion. Relevant sections of the Trust Agreement are reproduced in this Statement for convenience only and are qualified in all respects by reference to the applicable sections of the Trust Agreement.

for breach of covenants, failure to make proper appropriations, and for the diversion of revenues pledged for the payment of the Bonds, in violation of the Trust Agreement, the Commonwealth's Constitution, the United States Constitution, the Office of Management and Budget Act, and PROMESA (Claim Number 13386, the "Proof of Claim").

3. The Trustee takes no position on whether the relief sought in the Motion should be characterized as remedial or enforcement action under Article VII of the Trust Agreement. However, Section 704 of the Trust Agreement provides that holders of a majority in principal amount of the PRIFA Bonds outstanding shall have the right to direct the time, method and place of conducting all remedial proceedings to be taken by the Trustee under the Trust Agreement by an "instrument in writing executed and delivered to the Trustee, provided that such direction shall not be otherwise than in accordance with law and the provisions of [the Trust Agreement]."³

4. Upon information and belief, Ambac and FGIC together hold a majority of the beneficial interests in the Rum Tax Revenue Bonds. However, the Trustee has not received a direction and indemnity in satisfactory form to join in, or take a position with respect to, the Motion.

5. The Trustee has communicated to Ambac and FGIC through their counsel its position that in the event the stay is lifted to allow the Actions to be pursued, any and all Pledged Revenues required to be paid or otherwise turned over by the Commonwealth or any third party, and any adequate protection payments made in connection with the Commonwealth's use of Pledged Revenues, must be paid to the Trustee for *pro rata*

³ Section 704 of the Trust Agreement is also affected by Section 802, which requires that, before it is obligated to take any actions, the Trustee must receive a written direction and be indemnified to its satisfaction in connection with any and all costs, expenses, including counsel fees and other outlays, and against any liability.

distribution to bondholders in accordance with section 702 of the Trust Agreement, and cannot be paid directly to the bond insurers or any individual bondholders except as provided in that section and any other relevant provision of the Trust Agreement. The Trustee understands that Ambac and FGIC agree to comply with this requirement with respect to the payment of Pledged Revenues. Ambac and FGIC have communicated to the Trustee, through their counsel, Ambac's and FGIC's position that the proposed Actions are intended to enforce and protect their individual constitutional and other rights, and not the rights of all bondholders, and that any payments or escrowed monies that are not Pledged Revenues need not be paid to the Trustee for *pro rata* distribution to bondholders. Ambac, FGIC and the Trustee respectively reserve their rights with respect to the determination whether the Actions are intended to enforce and protect Ambac's and FGIC's individual constitutional and other rights, or the rights of all bondholders to Pledged Revenues.

6. The Trustee further reserves all rights with respect to the Motion and to respond to any of the arguments made in any responses to the Motion, and/or to seek inclusion in any Order granting the Lift Stay Motion of language consistent with its position as stated in paragraph 5 above.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 23rd day of July, 2019.

WE HEREBY CERTIFY that on this same date a true and exact copy of this motion was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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By: Iris J. Cabrera-Gomez

RIVERA, TULLA AND FERRER, LLC

Eric A. Tulla

USDC-DPR No. 118313

Iris J. Cabrera-Gómez

USDC-DPR No. 221101

Rivera Tulla & Ferrer Building

50 Quisqueya Street

San Juan, PR 00917-1212

Tel: (787)753-0438

Fax: (787)767-5784 (787)766-0409

etulla@riveratulla.com

icabrera@riveratulla.com

and

By: Robin E. Keller

HOGAN LOVELLS US LLP

Robin E. Keller, Esq.

Ronald Silverman, Esq.

390 Madison Avenue

New York, NY 10017

Telephone: (212) 918-3000

Facsimile: (212) 918-3100

robin.keller@hoganlovells.com

ronald.silverman@hoganlovells.com

*Counsel to U.S. Bank Trust National
Association*